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09/395,270	09/13/1999	FRANK PELOSI JR.	4451-18	5752

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EXAMINER

JOHNSON, BLAIR M

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 02/21/2002

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 12

Application Number: 09/395,270
Filing Date: September 13, 1999
Appellant(s): PELOSI, FRANK

Norman E. Lehrer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01-02-02.

A statement identifying the real party in interest is contained in the brief.

Art Unit: 3634

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

The statement of the status of the claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The summary of invention contained in the brief is correct.

The appellant's statement of the issues in the brief is correct.

Appellant's brief includes a statement that claims 1-4,6-8 and 10; claim 5; and claim 9 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

The copy of the appealed claims contained in the Appendix to the brief is correct.

5,601,910	MURPHY ET AL	2-1997
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5,902,658	WYMAN	5-1999
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SIGA Co. "Installation Instructions Tips and Tricks", no date given

Shaw Industries Technical Bulletin Nos. 78,82,83; 12/95

Claims 1-8 and 10 are rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action, Paper No. 9.

Claim 9 is rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action, Paper No. 9.

Claims 1-4 and 6-8 are rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action, Paper No. 9.

Art Unit: 3634

Claims 5 and 10 are rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action, Paper No. 9.

Claim 9 is rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action, Paper No. 9.

Response to Argument

Note: While the rejections in the final Office action, paper No. 9, referred to the Shaw Technical Bulletin No. 82, actually the Shaw reference relied upon by the Examiner, and not disputed by Appellant, encompasses Technical Bulletins Nos. 78,82 and 83, each submitted by Appellant in the form of an information disclosure statement. Each of the bulletins is directed to the same product, i.e. the Advantage System, but merely provide directions for using the Advantage System with different existing types of floor coverings. It is clear from the final action that all three bulletins were used by the Examiner's referencing of page numbers (fax page numbers) in the body of the action which included pages from all three bulletins.

Regarding the Wyman rejection of claims 1-8 and 10:

While the Examiner believes that the Wyman rejection is proper, he is withdrawing this rejection from consideration in favor of the other rejections as defended below so as to reduce the issues to be considered by the Board.

Regarding the Wyman in view of SIGA rejection of claims 1-8 and 10:

To summarize the rejection, SIGA clearly teaches the step of first applying a backing sheet to the floor using adhesive and then placing the carpet on top of the backing sheet by using adhesive on the top surface of the backing sheet.

Art Unit: 3634

Appellant places great emphasis on the recitation that the sheet is dimensionally stable. However, such is a very broad recitation. For example, dimensionally stable in relation to what? The phrase "dimensionally stable" is virtually meaningless since even the most loosely woven or no woven material has at least some degree of dimensional stability. Viewed another way, while Appellant considers his backing to be dimensionally stable, someone else may not consider it to be dimensionally stable. SIGA discloses a wide range of existing subfloors to which the backing may be attached. Appellant does not accurately recount the Examiner's position on page 6 of his brief. He has omitted the critical term "first" which the Examiner used in the final rejection. The order in which the steps of claim 1 are performed are critical. The term "first" was used to describe the teachings of SIGA to first attach the adhesively attached backing to the floor and then to lay the carpet thereon. Wyman discloses the exact structure of the backing as recited in many of the claims, including claim 1 but lacks only in that the backing is first attached to the carpet which is then attached to the subfloor. However, SIGA provides a teaching of reversing these steps by first attaching the adhesive to the floor and then attaching the carpet thereto. This teaching from clearly analogous art is properly applied to Wyman. The fact that Wyman discloses that the rug with the adhesive backing attached thereto may be easily removed for repositioning is not adversely affected in the least by the order in which the elements are assembled.

The rejection of claim 8 over Wyman in view of Shaw bulletin 82 is withdrawn since the rejection using Wyman alone has been rescinded.

Art Unit: 3634

Regarding the rejection of claim 9 under Wyman in view of SIGA and Murphy et al:

Murphy et al merely discloses a carpet backing having the properties recited, except for the thickness. Merely replacing one backing for another as proposed by the Examiner to achieve the advantages of the backing is an obvious step to one of even little skill in the art. If one were experiencing lack of stability of the backing, merely increasing the thickness of the backing would have been well within the purview of one of ordinary skill in the art.

Regarding the rejection of claims 1-4 and 6-8 under Shaw bulletin 82, Appellant admits that Shaw teaches placing a mesh sheet having adhesive thereon on a subfloor and then placing the carpet thereon, page 9 of the brief. He states that Shaw is deficient only in that the [sheet] is not dimensionally stable. However, as stated above, such a limitation is broad and essentially meaningless as well as easily met by the mesh backing of Shaw.

Lastly, the rejection of claims 5 and 10 under Shaw in view of Wyman:

The Examiner adheres to his opinion that providing the adhesives layers on the top and bottom of the backing, as taught by Wyman, with different strengths would have been obvious in order to provide different adhesion capabilities for different surfaces. It is important to note that claim 5 merely recites that the adhesives on the top and bottom of the backing are "different" and not "different types", "different strengths", etc. Having two layers of even the same type or strength of adhesive would still mean that the layers were "different".

Application/Control Number: 09/395,270

Page 6

Art Unit: 3634

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Blair M. Johnson


Primary Examiner
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BMJ

February 20, 2002

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